

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service:)	
)	
Review of the Definition of)	
Universal Service)	

**COMMENTS OF THE
COMPETITIVE UNIVERSAL SERVICE COALITION**

**COMPETITIVE UNIVERSAL
SERVICE COALITION**

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EXECUTIVE SUMMARY

As the Joint Board begins the process of reconsidering the basic structure of the universal service program, it must take care not to do anything that would worsen what Chairman Powell, in a recent speech, called the “uneconomical attributes of the current system that dampen competitive opportunity.” *Digital Broadband Migration – Part II*, Oct. 23, 2001, at 2. This means that the Joint Board should not raise the bar by adding more services or functionalities to the definition of universal service, which would have the effect of excluding carriers that do not provide such services or functionalities from qualifying as “eligible telecommunications carriers.” In effect, this might deprive consumers of the opportunity to buy services included in the current definition from additional carriers.

In particular, there is no legal or factual basis for adding broadband or high-speed functionality to the definition of universal service, since such services have not, “through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers” to date. 47 U.S.C. § 254(c)(1)(B). Nor should the definition be modified by specifying a minimum quantity of local usage or by increasing the bandwidth required for “voice-grade” access. Rather, the Joint Board and the Commission should encourage competition by simplifying and streamlining the definition to include all forms of voice-grade connectivity to public telecommunications networks.

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The Competitive Universal Service Coalition (“CUSC”), 1/ by counsel, hereby responds to the Joint Board on Universal Service’s (“Joint Board”) request for comment on the definition of “universal service.” 2/ CUSC submits that the definition of universal service should not be expanded at this time. In particular, there is no legal or factual basis for including high-speed or advanced services in the universal service definition at this time. The Joint Board and Commission should resolve remaining open issues with respect to existing definitions of supported services and functionalities.

1/ The Competitive Universal Service Coalition includes a number of diverse wireless and wireline competitive carriers (and their trade associations) that provide universal service or are considering doing so.

2/ *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1 (rel. Aug. 21, 2001), 66 Fed. Reg. 46461 (Sept. 5, 2001) (“*Public Notice on Universal Service Definition*”).

I. INTRODUCTION: IN “PHASE TWO,” THE JOINT BOARD AND THE COMMISSION SHOULD FOCUS ON MAKING THE UNIVERSAL SERVICE SYSTEM MORE COMPETITIVE

CUSC agrees with Chairman Powell’s recent statement that the time has come to reassess all of the FCC’s post-1996 Act local competition policies, including universal service policy. ^{3/} Moreover, a number of judicial remand orders mandate such a re-examination of universal service policy. ^{4/} CUSC thus agrees that “Phase Two” should be used to “evaluate what is working and what is not,” and to “take account of market experiences . . . that have changed the landscape.” ^{5/} The Joint Board undoubtedly will play a critical role in reformulating that policy, and the present Public Notice on the definition of universal service provides a useful starting point for such a holistic re-examination.

Nonetheless, while significant changes to universal service policy may be due, CUSC believes that the existing definition of universal service does not need

^{3/} “In the years following the statute, the Commission worked to implement its key provisions. Much of this ‘Phase One’ exercise was theoretical – attempting to make policy judgments and set conditions for activity that had yet to take place. We now have almost six years of real-world experience and can take stock of those judgments. It is time to make prudent course corrections in our policies.” Chairman Michael K. Powell, *Digital Broadband Migration – Part II* (Oct. 23, 2001) (available at <http://www.fcc.gov/Speeches/Powell/2001/spmcp109.pdf>) (“*Powell Regulatory Agenda*”), at p.4.

^{4/} See, e.g., *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001); *Comsat Corp. v. FCC*, 250 F.3d 931 (5th Cir. 2001).

^{5/} *Powell Regulatory Agenda* at 4.

to be expanded significantly. The main problems with universal service policy are not deficiencies in the basic definition, but rather that it is not yet fully consistent with competitive entry. As Chairman Powell indicated, “Universal service should be preserved in a manner that provides meaningful opportunities for competition.

* * * Yet many cite shortcomings in the current system as one factor undermining economic viability of competition and new entry.” 6/

In the re-examination of the definition of universal service commenced with the *Public Notice on Universal Service Definition*, the Joint Board and the FCC must take care to avoid definitional changes that might exacerbate these problems and further impede new entrants’ ability to compete in the provision of universal service. Though the public interest may require accelerated deployment of broadband technology in rural areas, it is by no means clear that revisions to the universal service definition are the best means to achieve this worthy end. Now is not the time to expand the list of services and functionalities included in the universal service definition, which would effectively exclude some carriers and thereby reduce competition for the services included in the existing definition. Rather, the Joint Board and the FCC should establish a more streamlined definition that focuses on basic connectivity to public telecommunications networks.

6/ *Powell Regulatory Agenda* at 5. See also Competitive Universal Service Coalition, *White Paper: The Road to Competitive Universal Service Reform* (July 2001) (presented to National Association of Regulatory Utility Commissioners’ July 2001 conference, available at <http://www.naruc.org/committees/telecom/cusc.pdf>).

This would help rectify the current system’s “uneconomic attributes . . . that dampen competitive opportunity.” ^{7/}

II. UNIVERSAL SERVICE SHOULD BE DEFINED BROADLY TO INCLUDE ALL MODES OF VOICE-GRADE CONNECTIVITY TO PUBLIC TELECOMMUNICATIONS NETWORKS, WITHOUT MANDATING PARTICULAR SERVICES

The definition of universal service should be crafted so as to permit any carrier that provides, at a minimum, voice-grade connectivity to public telecommunications networks to qualify as an eligible telecommunications carrier (“ETC”). The definition should include universal service, broadly defined, without regard to whether a carrier also provides additional functionalities, such as long distance, mobility, the network transmission component of Internet access, or broadband, that are not among the minimum functionalities required in the definition. Moreover, the definition should not include peripheral requirements that do not relate to the core functionality, and that can be abused by incumbent carriers seeking to thwart and impede new entrants’ ability to receive designation.

^{7/} *Powell Regulatory Agenda* at 2. As part of the broader “Phase II” review, CUSC urges the Joint Board and the Commission to (1) ensure that existing funding mechanisms are properly targeted to the highest-cost areas and consumers; (2) ensure that incumbent carriers do not turn ambiguities in the current system, or what should be routine procedures in its operation, into opportunities to thwart or impede competitive entry; and (3) resolve the issues remanded by the courts of appeals in a principled way.

The Joint Board and the Commission should consider revising the definition of universal service to eliminate constraints based on existing technologies, rate structures, or industry organization. The current definition is narrowly keyed to current rate structures and industry organization, and has the unfortunate impact of restricting carriers' creativity to experiment with new structures. For example, many observers have predicted the fusion of local and long distance services. Such fusion is already beginning to happen as wireless carriers offer service packages that bundle together local and long distance minutes in a manner that effectively competes against both wireline local exchange carriers and traditional long distance companies.

The current definition of universal service, however, includes a requirement that eligible carriers offer toll limitation for qualifying low-income customers. 8/ The definition also includes a largely undefined requirement to provide a minimum quantity of "local" usage included in consumers' service packages for no extra charge, and a requirement to provide access to "interexchange" services. 9/ Such restrictions effectively lock in existing market structures defining which services are "local" and which are "interexchange" by limiting universal service to local-only and thereby unnecessarily inhibiting creativity in responding to consumer demands with new types of combined local/long distance

8/ 47 C.F.R. § 54.101(a)(9).

9/ 47 C.F.R. § 54.101(a)(2), (7).

service offerings. CUSC submits that these requirements should be removed from the universal service definition. Similarly, intrastate or interstate toll services, expanded area service, and prepaid calling plans should not be included in the list of supported services, but rather should be left to market forces. 10/

The current definition also incorporates an unnecessary level of technological detail, which reflects an inappropriate use of the definition to induce certain desired behaviors. The problem with this approach is that such detailed requirements are prone to abuse by incumbent carriers that seek to stymie competitive entry by invoking the rules to convince state commissions not to designate new entrants as ETCs. For example, it may well advance the public interest for local exchange carriers and other potential ETCs to provide Touch-Tone signaling, single-party service, and/or toll limitation for qualifying low-income customers. 11/ These functionalities, however, need not be part of the definition of universal service, because the Commission can impose such requirements directly if it sees a need to do so.

Similarly, everyone agrees that E-911 is a vital national priority, but a separate set of Commission proceedings is already examining the complex

10/ *Public Notice on Universal Service Definition* at 3-4.

11/ 47 C.F.R. § 54.101(a)(3), (4), (9).

implementation of E-911. ^{12/} The vague language in the universal service definition contains none of the complexity of the E-911 rules, and thus poses considerable potential for abuse at the state level regarding whether competitive ETCs meet the E-911 requirement. It also may be a good idea to require wireline ILECs to provide “soft dial tone” or “warm line” features, but these are patently inappropriate for carriers using other technologies, and should not be included in the minimum list of functionalities that all ETCs must provide. ^{13/} If specific technological requirements such as those discussed above serve the public interest and are within the FCC’s authority, they should be imposed directly, rather than indirectly as part of the definition of universal service.

CUSC suggests adopting a simplified definition such as the following, based loosely on portions of existing Section 54.101(a) (which would allow deletion of Sections 54.101(a)(1)-(9) and (c)):

§ 54.101 Supported services for rural, insular and high cost areas

(a) Federal universal service support mechanisms shall support voice-grade access to public telecommunications networks. “Voice-grade access” is defined as a functionality that enables a user of telecommunications services to transmit and receive voice communications, regardless of the technology used or other features offered in addition to the voice-grade functionality using the same network facilities. Voice-grade access can be provided either through “always-

^{12/} See generally *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102. See also 47 C.F.R. § 54.101(a)(5).

^{13/} *Public Notice on Universal Service Definition* at 3.

on” communications channels and/or through call-by-call signaling, including the capacity to signal the network that the caller wishes to place a call and the capacity to receive voice communications with a signal indicating there is an incoming call. For purposes of this part, bandwidth for voice-grade access should be, at a minimum, 300 to 3,000 Hertz. Voice-grade access enables subscribers to obtain access to services including, but not limited to, emergency service, local calling, interexchange service, directory assistance, and information services that can be accessed via public telecommunications networks.

Note that this proposed definition clarifies that voice-grade access might include “always-on” services that enable subscribers to carry on voice communications, as well as conventional dial-up services, but does not specify or require any particular technology. The definition means that voice-grade access is a platform for obtaining access to local, long-distance, emergency, directory, and information services, without specifying the technology used to do so, and makes clear that providers of voice-grade access may (but are not required to) also provide additional features and functionalities over the same network facilities. Finally, it uses the term “public telecommunications networks” found in the Act’s discussion of the definition of universal service at Section 254(c)(1)(C), rather than the undefined term “public switched network” used in the current rules. CUSC urges the Joint Board to recommend, and the Commission to adopt, this revised definition of universal service.

III. THE DEFINITION OF UNIVERSAL SERVICE SHOULD NOT BE EXPANDED BY ADDING MORE SERVICES AND FUNCTIONALITIES

A. Broadband Services Should Not Be Included in the Definition of Universal Service

CUSC's members strongly support the goal of connecting consumers to the Internet and facilitating the provision of high-speed data services. Indeed, under the revised definition of universal service suggested above, ETCs that provide voice-grade access could also offer high-speed or broadband services over the same network facilities, as long as they also provide basic voice-grade services. However, it would be premature and inappropriate for the government to mandate that specific broadband services or higher bandwidth functionality be included in universal service offerings. Nor should the Commission add the network transmission component of high-speed Internet access to the definition.

First, technological alternatives for providing broadband services are still in flux, and the underlying economics quite unclear. For example, while some wireless carriers are beginning to introduce high-speed services either using what are referred to as "2.5G" or "3G" technologies, or using fixed wireless technologies, full deployment of wireless advanced services depends on pending policy decisions and technological developments that are not yet fully resolved. Wireline competitive local exchange carriers ("CLECs") also face uncertainties in the deployment of high-speed services either using their own facilities or a combination of their own facilities and those of incumbent local exchange carriers ("ILECs"). Moreover, competition, rather than regulatory fiat, is the best means of incenting carriers to

offer new and better services in response to consumer demands. ^{14/} This already appears to be happening to a significant extent with respect to broadband services. ^{15/}

Section 254(c)(1)(B) of the Act clearly indicates that Congress did not intend universal service policy to be used to stimulate deployment of new technologies and services. ^{16/} Rather, Congress intended that “the operation of market choices by customers” will be the primary driver of the deployment of new services, and that the universal service program would support affordable access only to those services that have already “been subscribed to by a substantial majority of residential customers[.]” Consistently, both the FCC order referring

^{14/} By way of example, the rapid deployment of digital subscriber line (“DSL”) services by CLECs provided a powerful incentive for ILECs to introduce DSL services. The entry of competitive carriers, and concurrent advancements in technology, will give consumers the necessary leverage to drive the availability of advanced telecommunications services to all consumers, thus fulfilling the promise of the Telecommunications Act of 1996.

^{15/} FCC Common Carrier Bureau, Industry Analysis Division, *High-Speed Services For Internet Access: Subscriberhip as of December 31, 2000* (Aug. 9, 2001) (available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0801.pdf) (“*High-Speed Subscriberhip Report*”) at 1, 6 (Table 1) (number of high-speed lines increased by 63 percent during the second half of 2000, with a full-year rate of growth of 158 percent); *see also id.* at 2, 8 (Table 5) (subscribers reported in all 50 states and 75% of all zip codes).

^{16/} 47 U.S.C. § 254(c)(1)(B) (“The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services . . . have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers[.]”).

issues to the Joint Board and the Public Notice issued by the Joint Board expressly state that this proceeding will not address a mechanism to stimulate deployment of broadband services. 17/

There is no legal or factual basis for including broadband services in the definition of universal service, because to date, only a small minority of residential customers have subscribed to broadband services (“high-speed” or “advanced” services, under the Commission’s definitions). 18/ According to the latest data collected by the FCC, only about 5.2 million “high-speed” or “advanced” lines have been purchased by residential and small business customers. 19/ Even making the optimistic assumption (given the current economic climate) that this figure will double by the end of 2001, and even further assuming that most of these 5.2 million high-speed lines serve residential households that subscribe to a single line each, this would still represent a small minority of U.S. households.

Moreover, expanding the definition of universal service to include some higher minimum bandwidth might have the perverse effect of depriving consumers of access to the broadest possible array of carriers that provide services to which

17/ *Public Notice on Universal Service Definition* at 1 n.2 (“[W]e do not at this time intend . . . to consider the creation of new universal service mechanisms to promote broadband deployment.”); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257, 25258, ¶ 3 n.7 (2000).

18/ *High-Speed Subscribership Report* at 1 n.1.

19/ *Id.* at 3, 6 (Table 3).

most residential customers subscribe. Under the existing universal service rules, the only practical impact of the definition of universal service is to define the minimum list of services that a carrier must be able to provide to obtain ETC status and receive universal service support. This means that including additional services or functionalities in the definition of universal service could reduce the number of potentially eligible service providers. Some incumbent providers that qualified as ETCs under the old definition, as well as some prospective new entrants that might have done so, might lose that capability if they do not provide all of the new services added to the definition. ^{20/} As a result, expanding the definition would give consumers access to *fewer* existing carriers and potential new competitors that would have been capable of providing universal service under the existing definition.

Expanding the services included in the definition of universal service also might increase the overall size of the universal service fund, which many believe is already too large. To be sure, the size of the universal service fund is not directly linked to a cost measurement based on the definition of universal service contained in Section 54.101 of the rules. Nonetheless, if an expanded set of services or functionalities were included in the definition of universal service, there

^{20/} While some carriers cannot, for technical reasons, provide advanced services or high-speed data, this is not the case with respect to certain of CUSC's members that have attained ETC status. For example, Western Wireless has launched

would be calls to expand the amount of funding to reflect the cost of those added services or functionalities. But any increases in the total size of the fund should be weighed very carefully. All other things being equal, increasing the size of the fund would place burdens on carriers and on the consumers who ultimately pay for the funding. At this critical time, with a serious downturn in the U.S. economy and in the telecommunications sector in particular, the Joint Board and the FCC should avoid imposing unnecessary burdens on the industry.

B. Outstanding Inquiries Regarding Minimum Local Usage and Voice-Grade Access Should Be Closed Out

Open questions regarding local usage and voice-grade access should be resolved to clear the way for the broader Phase II examination of universal service issues. The FCC has yet to resolve the question regarding quantification of the local usage component of universal service raised in a 1998 Further Notice of Proposed Rulemaking. ^{21/} In addition, there has been no action on the Common Carrier Bureau's solicitation of comment on proposals to modify the definition of "voice-grade access" to stimulate deployment of advanced services in rural

technical trials of high-speed wireless data service in Terry, Montana, and is planning to deploy such services more widely in the near future.

^{21/} *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) ("Local Usage FNPRM")

areas. 22/ The Joint Board should recommend that the Commission close out the open local usage and voice-grade access issues by, respectively, declining to establish a specific quantity of local usage, and declining to specify a higher bandwidth or bit-speed in the definition of voice-grade access.

1. The FCC Should Rely Upon Market Forces Rather Than Regulatory Fiat to Determine the Amount of Local Usage Provided by ETCs

The *Public Notice on Universal Service Definition* presents an opportunity to definitively resolve the issue of how much local usage ETCs must provide by eliminating any pre-set minimum, and instead allowing the market to dictate local usage amounts. The Commission has already solicited two rounds of comments and replies on how to quantify the local usage requirement. 23/ Those submissions show that competitive neutrality and consumer sovereignty require a *laissez-faire* approach to local usage. Indeed, new entrants responding to market forces are already offering universal service packages that include sufficient free local usage to attract consumers in high-cost areas. The Joint Board should thus recommend that the Commission modify the definition of universal service to

22/ Public Notice, *Common Carrier Bureau Seeks Comment on Requests to Redefine “Voice-Grade Access” for Purposes of Federal Universal Service Support*, CC Docket No. 96-46, DA 99-2985 (rel. Dec. 22, 1999) (“*Voice-Grade Access Public Notice*”).

23/ See *Local Usage FNPRM*, 13 FCC Rcd at 21279-81, ¶¶ 50-53; *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-160, 12 FCC Rcd 18514, 18580-82, ¶¶ 171-81 (1997). See also 47 C.F.R. § 54.101(a)(2).

simply include in Section 54.101(a)(2) “local usage,” without quantification of that requirement.

As discussed above, defining a minimum number of local minutes or calls, or some other usage benchmark, would unnecessarily lock in place the current industry structure and restrict ETC status to “local” service providers, even though local and long distance services are in the process of converging. Moreover, defining a minimum local usage requirement runs counter to competitive and technological neutrality, as the Commission has already acknowledged that setting a high level of local usage would give a competitive advantage to wireline carriers. 24/ Indeed, setting *any* minimum local usage requirement would favor carriers like ILECs, whose cost structures are largely driven by the cost of facilities dedicated to particular customers. On the other hand, refraining from setting any local usage requirement would not favor any class of carriers, but would be competitively neutral. As long as all ETCs provide connectivity to public telecommunications networks and receive the same fixed monthly amount of high-cost support (as the Commission has determined they must 25/), there is no need or policy justification

24/ See *Local Usage FNPRM*, 13 FCC Rcd at 21280, ¶ 49.

25/ 47 C.F.R. §§ 54.101(a)(1), 54.307(a).

for minimum monthly usage requirements. 26/ This view was shared by a wide range of parties, including a number of incumbent LECs. 27/

The evolution of calling plans that include substantial amounts of local and long distance usage demonstrates that, if consumers are empowered to choose among the calling plans, technologies, and networks that best suit their needs, competitive markets will drive carriers to provide them. This is no less true in the marketplace for services supported by universal service. Only in this manner will consumers in rural and high-cost areas have the same ability to select their own local service packages as their counterparts in urban and low-cost areas. 28/ Rather than imposing a solution by regulatory fiat, the Commission should allow

26/ The requirement that ETCs must first capture customers, *then* seek universal service funds attributable to them precludes the possibility that unscrupulous carriers could offer “a basic service package containing local usage that was priced hundreds of dollars higher than options [not including free local usage], so that no one selected it.” *Local Usage FNPRM*, 13 FCC Rcd at 21279, ¶ 50. Thus, ETCs in a competitive environment will tailor realistic packages to attract customers by meeting their needs in a cost-effective manner – including packages that include as much free local usage as the market demands – rather than non-viable offerings such as that described in the *Local Usage FNPRM*.

27/ See Ameritech at 4-7; USTA Comments at 3; AT&T at 7-8; Omnipoint Comments at 10; Sprint PCS at 7-16; CTIA at 16. Even advocates of prescribed local usage minimums recognized that customers with a choice of service providers will select service options that best suit their needs. See Ohio Consumers’ Counsel at 3. (Citations to parties’ comments in this section refer to those filed on January 19, 2000, in response to the *Local Usage FNPRM*.)

28/ 47 U.S.C. § 254(b)(3). See, e.g., Verizon White Pages for Montgomery County, Maryland, October 2000-September 2001, at 15 (offering calling plans based on flat-rate, per-call, and measured-service options, with the latter two featuring “limited” and “economy” options based on usage).

consumers in the rapidly changing marketplace to decide for themselves how local usage is packaged. If consumers can choose their provider, there is no reason for a minimum usage requirement – in fact, such intervention into the type of service plans competitive carriers must offer will limit consumer choice and distort competition. This is particularly true given that new entrants have commenced offering competitive service packages featuring amounts of local usage they believe consumers desire, and which likely differ from any requirement the government might impose.

Even among advocates of minimum local usage requirements, there was no consensus regarding an appropriate number of minutes, or how to quantify a usage requirement. Indeed, no party suggested any principled way to reach such a determination that would be competitively and technologically neutral. 29/ Thus, there are ample policy and practical reasons for rejecting the notion that any minimum amount of free local usage must be included in ETCs’ service offerings.

2. The FCC Should Not Increase the Bandwidth in the Voice-Grade Access Definition

In response to the Joint Board’s request to update the record on the *Voice-Grade Access Public Notice*, 30/ CUSC submits that the record in that matter

29/ See, e.g., GTE at 13-17; AT&T at 8 (“establishing the minimum local usage level is a daunting task” and “[i]t would likely be impossible to establish a local usage requirement that did not advantage once class of carriers and simultaneously preclude the provision of universal service by another class.”).

30/ *Id.* at 3.

clearly supports not changing the existing definition to require greater bandwidth or higher speeds. ^{31/} With the exception of the parties filing the petitions that triggered the *Voice-Grade Access Public Notice*, all the commenters opposed such a change to the definition of voice-grade access. This near-unanimous opposition was based on a number of well-founded considerations that favor maintaining the status quo, including:

- changing the definition of voice-grade access in order to spur development of advanced services in rural areas is unnecessary;
- changing the definition of voice-grade access would not necessarily spur development of advanced services in rural areas;
- the proposed rule change would have unintended consequences that would not advance and preserve universal service;
- significant costs would be associated with the change, without any countervailing benefits; and
- there was no evidence that an expanded frequency range would improve existing data transmission rates, especially given the numerous other factors that affect data transmission.

We briefly address some of these factors below.

^{31/} See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5329, ¶ 16 (1997) (“We did not intend to impose a more onerous definition of voice-grade access than . . . existing industry standards, and conclude that our decision here will ensure that consumers receive voice-grade access at levels that are consistent with Commission rules and that are not incompatible with current industry guidelines. . . . [W]e are concerned that . . . a substantial number of otherwise eligible carriers may be unable to qualify for universal service support if we . . . require all carriers to meet [a more stringent] standard[.]”); see also 47 C.F.R. § 54.101(a)(2) (“‘Voice-grade access’ is . . . a functionality that enables a user of telecommunications services to transmit . . . and to receive voice communications [such that the] bandwidth for voice-grade access should be, at a minimum, 300 to 3,000 Hertz”).

Market forces are the most powerful incentive to drive existing and prospective ETCs to support higher bandwidth services. ^{32/} Indeed, carriers already have ample incentives to deploy higher-speed transmission services throughout the country, and the Commission has rejected policy proposals that ILECs claimed were necessary to stimulate deployment of data networks in rural areas. ^{33/} The Commission held that those proposals would only restrict competition, and that carriers already had ample incentives to upgrade their networks to deploy advanced data services in rural areas. ^{34/} No modification to the universal service definition of voice-grade access is therefore necessary.

Finally, the Joint Board and the Commission must assess not only the impact of any new standard on ILECs, but the impact on competitive ETCs as well, including wireless carriers. Toward that end, as discussed above, the FCC must protect against making it more difficult for carriers to qualify as ETCs, as this

^{32/} See Chairman Michael K. Powell, *Remarks at the National Summit on Broadband Deployment* (Oct. 25, 2001) (available at <http://www.fcc.gov/Speeches/Powell/2001/spmcp110.pdf>) at 6 (“Market participants will pound away at difficult challenges in order to deliver service. They are very often capable of solving these problems through technological innovations, marketing, creative financing and many other skills that solid businesses possess.”).

^{33/} *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011 (1998).

^{34/} *Id.* at 24048-50, ¶¶ 79, 82; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 14 FCC Rcd 2398, 2431-39, ¶¶ 62-80 (1999).

would reduce the number of eligible universal service providers and in turn hinder competition to the detriment of consumers in rural and high-cost areas. 35/ In addition, because the harm from modifying the definition of voice-grade access to facilitate provision of advanced services would greatly outweigh any possible benefits, the Commission should refrain from making the proposed rule changes that gave rise to the *Voice-Grade Access Public Notice*.

IV. CONCLUSION

For the foregoing reasons, the Joint Board should recommend that the definition of universal service be streamlined to include all types of voice-grade connectivity to public telecommunications networks. The definition should not be expanded to include broadband service, and the Joint Board and the FCC should close out pending proposals to mandate a minimum quantity of local usage or to increase the required speed of voice-grade access. Finally, CUSC urges the Joint Board and the Commission to take other steps to remedy “shortcomings in the current system [that] undermin[e] economic viability of competition and new entry.”

35/ *But see supra* note 20.

Respectfully submitted,

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